


<sup>1</sup> Reyes also filed a motion to correct misstated dates in his original motion. The exact dates, whatever they may be, do not control the outcome of this motion.

Although Reyes did not raise the issue, this Court notes that if Reyes had challenged his conviction under 28 U.S.C. § 2255(h), because of newly discovered evidence, his motion would still very likely fail by virtue of two procedural defects.<sup>2</sup> As an initial matter, a successive claim under § 2255 must be filed with the circuit court directly. *See Haouari v. United States*, 510 F.3d 350, 352 (2d Cir. 2007). Moreover, any petition under § 2255 would have to satisfy the applicable one-year statute of limitations. *See* 28 U.S.C. § 2255(f). When Reyes' final criminal judgment was entered on May 8, 1998, the statute of limitations began running. Thus, Reyes' application more than nine years later would likely be dismissed as time-barred.

For the foregoing reasons, Petitioner's motion is denied.

**SO ORDERED.**

Dated: November 10, 2008  
New York, NY

A handwritten signature in black ink, appearing to read "K. B. Sand", is written over a horizontal line.

**U.S.D.J.**

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<sup>2</sup> Section 2255(h)(1) permits a successive motion for "newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense." 28 U.S.C. § 2255(h)(1). The Court does not reach the merits of a § 2255(h) claim because Reyes has not formally raised a challenge under § 2255(h) and because there is no occasion to reach the merits of a claim that is procedurally deficient.